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13 UNITED STATES DISTRICT COURT  
14 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
15 (San Jose Division)

17 **ELGRIE HURD III,**

18 Plaintiff,

19 v.

Case Number: C:07-03852 JF

20 **TOM COUNCIL,**

21 Defendant.

**JOINT CASE MANAGEMENT  
STATEMENT**

**Date: 3/14/2008**

**Time: 10:30 a.m.**

**Court: 3,5<sup>th</sup> Floor**

**Judge: Hon. Jeremy Fogel**

1 The parties to the above-entitled action jointly submit this Case Management Statement pursuant to  
2 Civil Local Rule 16-9.

3 **1. Jurisdiction and Service**

4 This Court has jurisdiction over this 42 U.S.C. § 1983 action pursuant to 28 U.S.C. § 1331. All  
5 parties have been served.

6 **2. Factual Summary**

7 On November 11, 2005, Plaintiff Elgrie Hurd III was one of many individuals involved in  
8 demonstrations and protests at De Anza Community College in Cupertino during a visit by former  
9 United States of America Secretary of State Colin Powell. Plaintiff was arrested that evening by  
10 Defendant Deputy Tom Council. Plaintiff contends that the seizure occurred while he was peaceably  
11 standing on a sidewalk/berm/curb on the side of the road. Plaintiff contends that there was no legal  
12 justification for the seizure and that he was profiled because of his race and/or national origin.

13 Defendant denies Plaintiff's allegations. Defendant contends that Plaintiff was blocking a  
14 roadway, refused to move out of the roadway and get up onto the sidewalk/berm/curb, and grabbed  
15 Defendant's arm. Defendant contends that he had legal justification for seizing and arresting Plaintiff,  
16 that the force used during the arrest was appropriate and lawful, and that Defendant did not profile  
17 Plaintiff due to his race and/or national origin.

18 **3. Legal Issues**

19 The disputed legal issues include, but may not be limited to: (1) whether Plaintiff's search and  
20 seizure violated his right not to be subjected to unreasonable search and/or seizure without probable  
21 cause; (2) whether Plaintiff's speech and/or expression and/or peaceable assembly was a substantial  
22 and/or motivating factor in Defendant's decision to seize and/or search Plaintiff; and (3) whether  
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28

1 Defendant's decision to seize and/or search Plaintiff was done as a result of Plaintiff's race and/or  
2 national origin.

3 **4. Motions**

4 There are no pending motions, and the parties do not anticipate filing any motions.  
5

6 **5. Amendment of Pleadings**

7 The parties do not anticipate any amendments to the pleadings.

8 **6. Evidence Preservation**

9 Defendants have preserved evidence, including incident reports, operations plans, video footage,  
10 and photographs.  
11

12 **7. Disclosures**

13 The parties served their initial disclosures by November 16, 2007.

14 **8. Discovery**

15 Defendant has served, and plaintiff has responded, to written discovery. Defendant has  
16 completed plaintiff's deposition. Plaintiff has indicated that he will depose Defendant and other  
17 potential witnesses. The parties do not anticipate any modifications to the discovery rules.  
18

19 **9. Class Action**

20 This action is not a class action.  
21

22 **10. Related Cases**

23 There are no related cases.

24 **11. Relief**

25 Plaintiff seeks compensatory damages in an amount in excess of the jurisdictional minimum of  
26 this Court, exemplary damages, punitive damages, attorneys' fees, and costs.  
27

28 **12. Settlement and ADR**

Counsel have met and conferred regarding ADR and agreed to participate in Early Neutral Evaluation, which was conducted on January 23, 2008. The matter did not resolve.

**13. Consent to Magistrate Judge**

On October 4, 2007, Plaintiff requested that this matter be reassigned to a district judge.

**14. Other References**

This case is not suitable for reference to binding arbitration, a special master, or the Judicial Panel on Multidistrict Litigation.

**15. Narrowing of Issues**

Defendants request that liability issues be bifurcated from damages at trial.

**16. Expedited Schedule**

Due to the disputed factual and legal issues this is not a case that is suitable for handling on an expedited basis.

**17. Scheduling**

The parties propose the following:

Expert disclosure	August 8, 2008
Discovery cutoff	September 12, 2008
Dispositive motions	September 12, 2008
Pretrial conference	November 7, 2008
Trial	November 17, 2008

**18. Trial**

The parties have requested a jury trial.

1 **19. Disclosure of Non-Party Interested Entities or Persons**

2 Defendant is an employee of the County of Santa Clara and is not required to file a Certification  
3 of Interested Entities or Persons.  
4

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6  
7 By: /s/ Christopher J. Keane

8 Attorney for Plaintiff

9  
10 By: /s/ Brian L. Larsen

11 /s/ Lauren B. Gelber

12 Attorneys for Plaintiff

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14 By: /s/Melissa R. Kiniyalocts

15 Attorney for Defendant

16 Dated: 2/27/2007  
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